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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of CANDACE PENDLETON and BARRY I. FIREMAN.	B156180 (Super. Ct. No. SD010709)
CANDACE PENDLETON, Respondent, v. BARRY I. FIREMAN, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Keith Clemens, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Barry I. Fireman, in pro. per., for Appellant.

Friedman & Friedman, Ira M. Friedman and Gail S. Green for Respondent.

In this marital dissolution proceeding, the husband challenges a judgment that obligates him to pay the wife's legal and accounting fees. We affirm.

FACTS

Candace Pendleton and Barry I. Fireman were married in July 1991. In 1996, Pendleton filed for dissolution, and the case has slowly worked its way through the courts. (See *In re Marriage of Pendleton and Fireman* (2000) 24 Cal.4th 39.) In February 2000, a one-day trial was held with regard to certain "reserved issues," including the parties' rights vis-à-vis their investment in Sierra Bonita Associates Ltd., a limited partnership. Fireman appeared in *propria persona.*

In July, the trial court issued its tentative decision, finding that the investment had been purchased with separate property funds, with $48,000 contributed by Pendleton and $192,000 contributed by Fireman; that Pendleton had a 20 percent interest in the investment, Fireman an 80 percent interest; that the transaction was handled entirely by Fireman, and held solely in his name (a fact he did not disclose to Pendleton); and that Fireman failed and refused to account to Pendleton for distributions made by Sierra Bonita and instead misrepresented to her that no distributions had been made. The court found that Fireman had breached his fiduciary duty by converting the distributions to his own use. In addition, the court found that the bulk of Pendleton's legal and accounting fees had been incurred because of Fireman's breach of duty, and

that Fireman had assets sufficient to justify an order directing him to pay her fees. (Fam. Code, § 271.)[1]

In keeping with its findings, the court's tentative decision ordered Fireman (1) to transfer to Pendleton 20 percent of the Sierra Bonita investment and 20 percent of the distributions he had received, and (2) to pay Pendleton's reasonable attorney's fees ($17,285.47) and accounting fees ($6,000.00). The decision included this provision: "If neither party submits any proposal for a statement of decision within the time specified by [rule] 232, this Notice of Tentative Decision will stand as the court's statement of decision. . . . Once the statement of decision process is completed, counsel for [Pendleton] is ordered to prepare a Further Judgment on Reserved issues . . . in conformance with this . . . tentative decision."

In early December 2000, Pendleton's lawyer mailed a proposed judgment to Fireman and submitted it to the court for signature. Through the trial court's "oversight," the proposed judgment sat unsigned for several months, and it was not signed until December 31, 2001. Notice of entry of judgment was given in January 2002. Fireman's appeal is from the judgment.

DISCUSSION

Fireman (again in *propria persona*) challenges the trial court's "reliance" (in its tentative decision) on rule 232 on the ground that no statement of decision is required where (as here) a trial is completed within one day (he

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[1] Undesignated section references are to the Family Code, and all rule references are to the California Rules of Court.

claims the appropriate procedure was that set out in rule 391). According to Fireman, he complied with rule 391, but the trial court ignored his objections. It follows, he claims, that "it should not be inferred on appeal that the trial court decided [the issue of fees] in favor of [Pendleton]." He also contends the evidence is insufficient to support the award of fees. His contentions lack merit.

First, the trial court's citation of rule 232 does not affect its orders or the judgment. Although rule 232 does not obligate the trial court to sign a statement of decision when a trial lasts less than one day (rule 232(h)), there is nothing in the rule or elsewhere to prevent a court from doing more than it is required to do by providing the parties to a one-day trial with a statement of decision. And rule 391 (which applies to the preparation of orders following rulings on motions) does not apply to the orders in question. That said, we will assume that Fireman submitted the appropriate objections.[2]

Second, the trial court's rejection of Fireman's "objection" -- that the trial court had no factual basis for its finding that he had sufficient assets to order him to pay Pendleton's fees -- does not mean that "it should not be inferred on appeal that the trial court decided [the issue of fees] in favor of [Pendleton]." In this regard, Fireman's reliance on section 634 of the Code of Civil Procedure is misplaced. The statute provides that when "a statement of decision does not resolve a controverted issue, or if the statement is ambiguous and the record

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[2] The three documents included in Fireman's appellant's appendix -- an April 6, 2000, memorandum and two letters, one dated December 8, 2000, the other dated October 17, 2001 -- are not file stamped and (as Fireman concedes) none of them were filed with the court. Fireman insists the letters were sent, and insists this informal means of communication was permitted over the years of this litigation. For what they are worth, we will treat the "objections" as though they were before the trial court. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1; 9 Witkin, Cal. Procedure (4th ed. 1996) Appeal, § 328, pp. 369-370.)

shows that the omission or ambiguity was brought to the attention of the trial court . . . prior to the entry of judgment . . . , it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue." Here, the tentative decision (which became the statement of decision) clearly and unambiguously resolved the fee issue in Pendleton's favor. The court's refusal to state the factual basis for its resolution of that issue does not make its finding ambiguous.

Third, we reject Fireman's contention that there is insufficient evidence to support the trial court's finding that Fireman had sufficient assets to permit an award of fees under section 271.[3] The issue has been waived by Fireman's failure to include a reporter's transcript of the trial held in February 2000 (or any other evidence that was before the court at that time), leaving only the presumption that the judgment is supported by substantial evidence. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) For what it's worth, we note that, at the time these dissolution proceedings began, "each

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[3] As relevant, subdivision (a) of section 271 authorizes the court to "base an award of attorney's fees and costs on the extent to which the conduct of each party . . . furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award . . . , the court shall take into consideration all evidence concerning the parties' income, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award."

party had a net worth of approximately $2.5 million." (*In re Marriage of Pendleton and Fireman, supra,* 24 Cal.4th at p. 42.)[4]

DISPOSITION

The judgment is affirmed. Pendleton is awarded her costs of appeal.

NOT TO BE PUBLISHED.

VOGEL (MIRIAM A.), J.

We concur:

SPENCER, P.J.

MALLANO, J.

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[4] In his reply brief, Fireman attempts to shift the burden to Pendleton by contending she should have augmented the record to present the evidence that would have supported the trial court's finding. That is not how it works. (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [an appellant who provides the court with only a clerk's transcript or appendix and does not provide a reporter's transcript cannot challenge the sufficiency of the evidence because "it is presumed that the unreported trial testimony would demonstrate the absence of error"]; see also *In re Marriage of Hall* (2000) 81 Cal.App.4th 313, 316.)